

## REMARKS

Reconsideration of the subject application is respectfully requested.

Applicants thank the Examiner for his detailed response and analysis. Applicants agree with the Examiner that, as stated in *In re Lee*, 61 USPQ2d 1430, 1432 (Fed. Cir. 2002), the findings of the PTO will be set aside if unsupported by substantial evidence. The Examiner argues that the "preponderance of evidence test" should be applied to his findings of inherency. But, it is respectfully submitted that no evidence at all has been offered regardless of what test is applied. The Examiner offers only conclusions. As the *In re Lee* court cautions at 1435, "common knowledge and common sense" are not a substitute for evidence.

However, in order to advance prosecution of the subject application, applicants have now substantially amended each of independent Claims 26, 35, and 40 to specifically set forth the present invention. These claims, as now amended, set forth a particular sequence of steps that is neither disclosed explicitly nor inherently by the prior art. The Examiner's attention is directed to the use of the word "then" in the presently amended claims, which indicates a specific sequence. It is respectfully submitted that the specific sequences set forth cannot be reasonably argued as being inherent in any of the prior art references cited.

The present invention and prior art have been discussed in detail in Amendment B submitted on June 16, 2003. That discussion is being incorporated herein by reference rather than being repeated in this response. Only certain new matters raised in the last office action will be addressed herein.

The Examiner, in paragraph 8 of the office action, alternatively rejects Claims 26-38 as being obvious in view of Kanevsky. The Examiner attempts in this paragraph to offer evidence by taking Official Notice of certain facts. Applicants traverse the Examiner's assertion on the grounds set forth in

Paragraph A of Amendment B submitted on June 16, 2003 and request an affidavit in accordance with CFR 1.104(d)(2), or alternatively request that the Examiner cite a reference in support of his position in accordance with MPEP 2144.03.

In paragraph 6 of the office action the Examiner sets forth his rejection of Claim 40 as being anticipated by Walker and in paragraph 12 alternatively rejects Claim 40 as obvious in view of Walker. The Examiner chooses not to look at Claim 40 as a whole and recognize the interrelationship of the steps but instead just looks and pieces and ignores specific claim features. This is especially true for Claim 40 as now amended. However, Claim 40 previously recited registering said advertising information in said server after receiving payment. To this limitation the Examiner responded with "recording the payment received for accounting purposes." It is not at all clear what "payment" the Examiner is referring to. Is it what the customer pays when he first purchases an item? What would this have to do with registering advertising information? The claim recites a specific relationship between receiving payment and registering advertising information but the Examiner ignores this relationship. The Examiner again concludes "inherency" without offering evidence. Conclusions are not evidence regardless of the standard applied. In paragraph 12, the Examiner takes Official Notice that POS systems have servers for scalability purposes. Again, Applicants traverse the Examiner's assertion and request an affidavit in accordance with CFR 1.104(d)(2), or alternatively request that the Examiner cite a reference in support of his position in accordance with MPEP 2144.03. In any event, Claim 40 has been substantially amended to recite the present invention as a particular sequence of steps that is neither anticipated nor made obvious by Walker or the other references cited.

In view of the foregoing amendments and remarks, Applicant respectfully request favorable reconsideration of the present application.

Respectfully submitted,



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